

MINUTES

SALINA BOARD OF ZONING APPEALS

City Commission Room 107

Thursday, March 15, 2007

MEMBERS Funk, Sanborn, Schmitt, Wilson and Worth
PRESENT:

MEMBERS Lange and Morse
ABSENT:

STAFF
PRESENT: Andrew, Asche, Burger and Herrs

Item #1. Approval of the minutes of the regular meeting of February 15, 2007.

The minutes of the regular meeting held on February 15, 2007 were approved as presented.

Item #2. Application #V07-2, filed by Deana Hoffer on behalf of Marvin Johnson, requesting the following variances: 1) a minimum lot size variance of 90 sq. ft. from 1,000 sq. ft. per dwelling unit (the minimum lot area required in the R-3 zoning district) to 910 sq. ft. per dwelling unit and 2) a variance to the off-street parking requirements in Section 42-553 of the Zoning Ordinance to reduce the number of required spaces for an apartment building from 14 to 4 spaces to allow a seventh apartment to be added to an existing six unit apartment building. The subject property is legally described as Lot 28, less the West 5 ft. thereof, in Block 2 of Van Trine's Addition to the City of Salina, Saline County, Kansas and addressed as 660 S. 2nd Street.

Mr. Andrew presented the staff report, including visual presentation of photographs and site plan details, which are contained in the case file.

Mr. Wilson stated excuse me Dean, I have a question. Does that land area include the parking stalls or would the parking stalls be an addition to the 1,000 sq. ft. per apartment?

Mr. Andrew stated the parking stalls, if they're on private property are counted as part of the lot area.

Mr. Wilson stated okay.

Mr. Andrew continued with the staff report.

Mr. Andrew stated to answer Mr. Wilson's question as to the area of the lot, you have to envision this site plan or plot plan and you look at the paved area in front of the building, and from the power pole on out it's part of the street for 2nd Street. It's not part of the lot.

Mr. Andrew continued with the staff report.

Mr. Schmitt asked do we have any questions?

Mr. Wilson stated I do. Or do you want to go Eugene? First of all I'd like to say that is a very nice looking building. I drove by it and the siding and the roofing are very nice. The second thing, these are one bedroom apartments and it was implied the tenants wouldn't have vehicles, so would it be proper for me to ask is this rent subsidized for low income people, is that why there wouldn't be any vehicles?

Mr. Andrew stated I think that is something the applicant would be best able to address. Whether that's a lease restriction or if it's income based, we're not sure how that would be determined or controlled.

Mr. Wilson stated ok. And the other thing, let's see here, on page 4 under No. 3 (unnecessary hardship) in the third paragraph it states that the owner can not rent out a third basement apartment. Is that referring to the seventh apartment?

Mr. Andrew stated yes, there is currently two on the top floor, two on the main floor and two in the basement. The desire is to add a seventh apartment which would create a third apartment in the basement.

Mr. Wilson asked and that would be too small an area under the Code?

Mr. Andrew stated under the city's Minimum Housing Code the area for that proposed efficiency apartment does not meet the city's Minimum Housing Code.

Mr. Wilson stated ok. Thank you.

Mr. Schmitt stated Eugene?

Mr. Sanborn stated the question that I had is that I noticed under the application it says "can not rent apartment number 6 due to the City's zoning". Is that because of the minimum size requirement?

Mr. Andrew stated no it has to do with the fact that the Building Official can not issue a permit that's in conflict with the Zoning Ordinance. That's the purpose of why we're here. He couldn't issue a permit to allow the storage area to be converted to a seventh apartment because there is not

enough land area under the Zoning Ordinance to have a seventh apartment and there's not enough parking to add a seventh apartment.

Mr. Sanborn stated but this says they can't rent apartment number 6, which means out of the six existing apartments they can only rent five?

Mr. Andrew stated I think, can you go to the floor plan John, I think this is best explained by the floor plan. This can be better explained by the applicant. The way we understand it the area labeled five there is an apartment today and rented. The area identified as seven is an apartment today and rented. This area identified although numbered as six, that would be the seventh apartment. So I believe that is the reference to apartment six. That is the space that they wish to convert to a third apartment in the basement. It's not the ability to have six apartments but that space would be identified that way, as apartment six.

Mr. Sanborn stated thank you.

Mr. Funk asked what's the minimum size for an apartment, getting to this item No. 1 on page 6?

Mr. Andrew stated there is a minimum bedroom size. I'm not sure that I have that number in front of me. That falls under the Building Code and Minimum Housing Code. There is so much square footage of sleeping space you have to have per occupant. We kind of got into that with the issue in front of the Planning Commission about the boarding home and how many occupants it could have based on the square footage available for each bedroom.

Mr. Funk stated this is a studio which doesn't really have a bedroom.

Mr. Andrew stated the whole area would be considered living space. I can not put my finger on that number.

Mr. Funk stated I guess I was asking whether there's even a question whether this could be approved by the Building Advisory Board?

Mr. Andrew stated it's the same thing in both cases. The Building Official can not issue a permit that's contrary to the Zoning Ordinance. He also can't issue a permit to create living space or sleeping space that doesn't meet the requirements of the Minimum Housing Code. So that would require an area variance.

Mr. Funk stated that's another hurdle even if they get past this one.

Mr. Andrew stated that is correct. This is the appropriate venue for seeking relief from strict application of the Zoning Ordinance. The Building Advisory Board is the avenue from seeking relief from strict

application of the Minimum Housing Code. Your job is to weigh whether there is justification for granting that relief.

Mr. Funk asked now any variance there would be approved for this particular lot and runs with the property?

Mr. Andrew stated that is correct.

Mr. Funk asked even if the property were to be remodeled and the three units on each floor be converted into one apartment, that would still require the two parking spaces?

Mr. Andrew stated correct. The way we look at it is that it has six units today and four parking spaces. That doesn't meet our current code, it is grandfathered in. But anything that they do, if they want to add units or expand the building or anything like that, then the current codes come into play. To add one more unit that means you need to add two more spaces for that unit and there is no space to add it.

Mr. Funk stated but even if it were converted to three apartments, one on each floor, you'd still need six spaces and you only have four now.

Mr. Andrew stated that's correct. You are correct that if this variance is granted it runs with this particular property. If the ownership changes 10 years from now the variance runs with the land.

Mr. Funk asked under what circumstances would the grandfather clause be lifted?

Mr. Andrew stated if the house were voluntarily removed or if it burned down.

Mr. Funk stated tornado?

Mr. Andrew stated if a tornado hit it and somebody wanted to build back and they only had room for four parking spaces they could build a duplex back. That's all they would be able to build back.

Mr. Worth stated I have a question. Would it be possible to convert part of the open space at the rear to provide additional parking spaces? Would that be possible and feasible?

Mr. Andrew asked is that question directed towards staff or do you want the applicant to come to the podium and address that?

Mr. Worth stated either one.

Mr. Wilson asked the lot is not wide enough is it for a driving lane on the side?

Mr. Andrew stated there are certainly individual homes and in some cases duplexes around the community where they may have a garage or may have a driveway coming off the alley that serves the rear area. First of all I'm not real clear whether that's even an open and functioning alley.

Mr. Wilson stated no it is not. I've tried to drive down there and it's just an easement.

Mr. Andrew stated it is not really a driveable surface. The other item of concern would be I'm not sure we'd even want to open it up anyway because at 10 ft. wide it doesn't really support cars going both ways. It's not even a safe alley. But there is a space at the rear, it's just not accessible.

Mr. Wilson stated I drove down there today and I didn't find an access to the alley either on Crawford or Prescott.

Mr. Andrew stated the term alley means that the City of Salina owns the land underneath it. It doesn't necessarily mean it's an open, driveable public access.

Mr. Wilson asked it's more like an easement not an alley?

Mr. Andrew stated yes it's more like what you'd find between two back yards. You have power poles in the utility easement.

Mr. Wilson asked so you can't access it, if you had parking in the back of the house you wouldn't be able to drive into the alley and get to the parking?

Mr. Andrew stated that is correct.

Mr. Schmitt stated alright. Any other questions? Would the applicant like to step the podium? State your name and address.

Deana Hoffer, 415 E. Crawford Street, stated I brought some really great colored pictures but Dean took care of that for me. I do have a letter here that was wrote and two of the homeowners that live at 667 S. 2nd and 669 S. 2nd signed my letter stating that they don't feel that this would be any kind of hardship because they were homeowners when this was a drug house. So they are very much pleased with how it's being run now as opposed to how it was. Apartment six in the basement is complete. There were some glitches or something when we were remodeling this. We thought we had clearance to go ahead with it so we went ahead with it and then something happened and they came out and they were like "no,

you can't rent that apartment six" so when he said the floor plan, that apartment six is complete. It has a tub, bathtub, brand new refrigerator, stove and egress windows. And that might be another thing, we have eight of these apartments between Bond and 743 S. 2nd that are considered efficiency apartments. We rent these through the Salina Housing Authority and Central Kansas Mental Health. These people don't possess driver's licenses or have the ability to have a driver's license.

Mr. Worth stated could you please use the microphone.

Ms. Hoffer stated ok. Is that better? Ok. So these people don't even have the ability to possess a driver's license so they're on foot or they walk. And almost all of these clients use the Central Kansas Mental Health which we're not that far a walking distance from them. Of those eight apartments all eight are, well, eight, nine, ten, I have nine out of the ten are rented. These are all bills paid units that all have egress windows. We're grandfathered in to not have to have egress windows. But the owner's very adamant that if somebody is going to be living in the basement that they're going to have access to get out if there's an emergency. (Ms. Hoffer handed out copies of the letters from neighboring property owners).

Mr. Wilson stated however, if you did sell that in the future there would be no requirement that the future owner would rent to those kinds of people. So the new tenants may have vehicles.

Mr. Funk asked are we talking here about a sixth apartment or a seventh apartment?

Ms. Hoffer stated it's the number six apartment but the apartment six would make it be seven apartments at 660 S. 2nd.

Mr. Funk asked you have two in the basement right now?

Ms. Hoffer stated I actually have three in the basement right now.

Mr. Funk asked one you can't rent because you can't get a permit for it?

Ms. Hoffer stated right.

Mr. Funk stated so the apartment under question here has already been constructed and completed.

Ms. Hoffer stated correct.

Mr. Wilson asked did you obtain a building permit for that?

Ms. Hoffer stated yeah we had a building permit when we started.

Mr. Wilson asked I mean for that last individual apartment?

Ms. Hoffer stated when we took over this building there were people living in every room possible. It was just a total nasty place. The for sale sign went up in the yard.

Mr. Wilson stated I understand that. But what I was kind of curious about was the permit.

Ms. Hoffer stated we thought we had a building permit to do all seven apartments.

Mr. Wilson stated what we're discussing today it seems to me is if you applied for a building permit for that then at that time you probably would have been told that you needed more parking places. But I guess you've already built it and now you find out you need more parking places.

Ms. Hoffer stated which we have in the storage unit at 671 S. 2nd. Currently my tenants that live in five and seven don't possess vehicles. In their lease we state that there's no off-street parking for them.

Mr. Wilson stated but even so you tell them that there's no off-street parking but that still violates the code.

Ms. Hoffer asked violates what code?

Mr. Wilson stated even though you warn your tenants.

Ms. Hoffer stated it's in their lease and they sign that lease and they realize that they're renting an apartment that does not have off-street parking.

Mr. Wilson stated even if so it's still in opposition to the code even though you tell them that. Because you're supposed to have two stalls for each apartment.

Mr. Funk asked what's the width of that street, both the right-of-way and the street width?

Mr. Andrew stated I believe it's an unusually wide right-of-way. I believe the right-of-way may be 80 ft. instead of the more traditional 60 ft. Our standard street pavement width would be 33 ft. back to back or to back of curb. Second Street was rebuilt in the late 1980's. There was a brand new drainage box or structure that was put in that runs from the slough under 2nd Street to the old cut-off channel. That was put in and basically a new street was put in on top of it. That work was done in about 1988 or 1989.

Mr. Funk asked has anyone from your staff observed the parking situation on this street during what would be peak parking periods?

Mr. Andrew stated we've looked at aerial photos, we've looked at the experience of driving it at different times. I might have to go back to the plans. It has the feel of being a wider or more open street than some of the other residential streets in town. We have not ever gotten calls or complaints about excessive parking on both sides or the street feeling congested.

Mr. Wilson stated of course that would be in the evening when people are home from work and they're parking. So that would be the time when it would be congested.

Mr. Sanborn asked when you purchased the property how many units did it have existing?

Ms. Hoffer stated it had three families living in the basement.

Mr. Sanborn asked how many apartments though? I mean three families could be living in one apartment.

Ms. Hoffer stated right. Six apartments.

Mr. Sanborn asked so when you purchased it it had six?

Ms. Hoffer stated correct.

Mr. Funk asked what year was that?

Ms. Hoffer stated I believe in 2000.

Mr. Funk asked did you remodel it since then?

Ms. Hoffer stated yes. It was under renovation for several years.

Mr. Sanborn stated I just wanted to make sure what you started with.

Mr. Funk asked how many of your tenants have cars?

Ms. Hoffer stated one, two, three, three.

Mr. Funk asked is there ever any double parking in that parking area or some parking in the street right-of-way which is paved but it is still a street right-of-way?

Ms. Hoffer stated the only time a tenant in number 2, you can see it in the pictures, she has a silver car that she got rear ended with so it's actually not tagged and she parks the white car she has now behind that silver car. And that's the only time that it's double parked and we've asked her to dispose of that car which she has neglected to do.

Mr. Schmitt asked are there any other questions?

Mr. Funk asked about what do these studios run rent wise?

Ms. Hoffer stated a studio / efficiency all bills paid is like \$325.00.

Mr. Wilson asked what does efficiency mean? Efficiency as far as heating and cooling?

Ms. Hoffer stated what we consider an efficiency is where they eat at and sleep at is kind of one room and then they have a separate bathroom. That is what I call an efficiency.

Mr. Wilson stated oh, ok. It doesn't necessarily refer to insulation or the heating costs?

Ms. Hoffer stated they all have brand new central heat and cooling systems.

Mr. Sanborn stated they don't have to pay for it anyways.

Ms. Hoffer stated yeah so they don't care.

Mr. Andrew stated from our standpoint those terms studio and efficiency are interchangeable. Studio or efficiency refers to having all your living space basically in one large room whereas a one bedroom apartment has a physically separate sleeping space from the rest of the living area.

Mr. Funk asked does each unit have it's own furnace and air conditioning system?

Ms. Hoffer stated yes.

Mr. Funk asked a separate meter?

Ms. Hoffer stated I don't think when we did the basement apartments we paid the bills on them.

Mr. Funk stated in the picture it looked like there were six meters there.

Ms. Hoffer stated I think there might be only four or five. We pay the bill for the basement.

Mr. Funk asked can you get the other picture?

Ms. Hoffer stated six cans.

Mr. Funk stated it looks like there is six there.

Ms. Hoffer stated then five of seven could be individually metered. But we pay the bills on them.

Mr. Schmitt asked any other questions? You can sit down.

Ms. Hoffer stated thank you.

Mr. Schmitt stated we'll bring it back to the Board.

Mr. Andrew stated I would just like to clarify for the Board a couple items; first the renting of six apartments and having the four spaces does not comply with code but it is legal from the standpoint that it's grandfathered in so they could maintain it just the way it is. I think the difference of opinion was with the City Building Official's inspectors. When you use the term remodel something it means you're renovating, you are taking what's there existing and you are updating it or you're changing things around. It was the Building Official's belief that the remodeling or renovation of the basement resulted in the creation of a living unit that was not there before. So that is the Building Official's interpretation and that's why from the Building Official's view there was not a remodeling of an existing seventh apartment but it was the creation of space that added one. That is the difference in perspective I think. But that is what the conclusion of the Building Official was and that's essentially why we're here. That while that is physically there he is not of the belief that the permit for the renovations or remodeling included the addition of a new living unit. So that is the area of contention and that's why this is before you. It is the Building Official's position that there is no seventh apartment that is grandfathered in. Only six are. Any newly created living unit needs to comply with current codes. So we're not talking about you've added a seventh unit you have to have fourteen spaces, we're really saying six units and four spaces are grandfathered in. Technically you would have to provide two spaces to have the seventh unit not ten. Again, if this were burned down or leveled by a tornado or was voluntarily torn down and we started over I think we're looking at a duplex with four spaces. But this is the current situation.

Mr. Wilson stated I was wondering so actually there are seven apartments built. What if they took that seventh apartment that is too small and combined it with an existing apartment and had a bigger one. Then basically you would have an apartment with one bedroom and that could rent for more money. I wonder have you thought about doing that?

Ms. Hoffer stated no.

Mr. Andrew stated I am sorry we did not include the letter from the building inspector in there. But that was offered up as a possible solution. It was that this is finished space and the investment has been made and this space could be configured in such a way where we could expand or essentially add a bedroom to one of the existing units. We'd still end up with six living units but would have more space added to each of those units. That was offered by the Building Official as a possible option because it would not result in the addition of a seventh living unit. This is the option that the owner wishes to pursue.

Mr. Wilson stated and also if I understand Mr. Andrew when the building permit was issued for remodeling the building inspector didn't realize there were going to be seven apartments. Did you kind of think there was going to be six? Because when I asked before when the building permit was issued and if the building person knew there were going to be seven apartments then at that time why didn't they say well you don't have enough parking spaces and that shouldn't be done? I'm still kind of questioning that.

Mr. Andrew stated there was no building permit issued to allow a seventh apartment.

Mr. Wilson asked did they submit a building permit just to remodel?

Mr. Andrew stated if we issue you a building permit to remodel your house and you turn your house from single-family into a duplex in an area that doesn't allow duplexes that remodeling permit didn't authorize you to turn it into a duplex.

Mr. Wilson stated yeah that 's what I was wondering. Perhaps the permit wasn't stated accurately then when the application was filed.

Mr. Andrew stated these situations do come up when you're dealing with an older historic property. We have had different properties that were used for boarding houses, group living, different things while the air base was open and what you do is you do the best you can with your research of all the records. You look at utility records, you look at how many meters are there. You look at all the different things. And all the research that was done concluded that there were never more than six living units in this building.

Mr. Wilson stated yeah and I'm not blaming the City people. I'm saying the applicant probably should have made it more clear of what they were doing.

Mr. Andrew stated but they could have believed some way that there were seven. So it's a non-meeting of the minds.

Mr. Wilson stated yeah, that's right. I have driven down that street in the evening and there are more cars parked. During the day people are at work and the street isn't as crowded and in the evening it is more crowded. People parking on the streets and so on.

Mr. Andrew stated and this is not the only property in the neighborhood that doesn't have the specific number of spaces that would currently be required because it is an older area.

Mr. Funk stated well my problem with this is that it's so far out of line right now and if we approve one more apartment with two more spaces then it's even further out of line and then it runs with the property. So that even if it's ever remodeled and turned into only three apartments it's still way short of the number of spaces. I guess we don't give special permits that run ten years and then we review this or five years or something like that, a Conditional Use Permit like we do on the Planning side. I guess I would have a hard time voting to approve this particular application.

Mr. Sanborn stated I think the issue that we're talking about though is do we have adequate parking? From the sounds of the way it's been described the clientele are handicapped and not having vehicles. I think that issue is what we're looking at. And at least from what I'm reading from people that are living next to them they don't have a problem with that. So we really don't have the authority, the Building Advisory Board has the authority to tell them if they can use that seventh apartment. To me what we're doing is saying is there adequate parking for a seventh apartment? And I believe there is if they continue to have the clientele that is using that area. I think that type of apartment is necessary and a need for the community. However, for us to say there is a seventh apartment that can be put in there, that is not something we can do.

MOTION: Mr. Sanborn stated I make a motion that the variance be approved with the understanding that what we're advocating is there is adequate parking for the type of use of the apartment and that the applicant must obtain a variance from the Building Advisory Board to allow the basement studio to be used. So they are still not over the hurdle. Of course a Kansas licensed architect is going to need to do a code footprint to make sure the existing and the remodeling is safe for occupancy. Those issues I think are very large issues that have to be addressed beyond us and if they can meet those standards then as far as our side I think there would be adequate parking.

SECOND: Mr. Schmitt.

Mr. Wilson asked who seconded it?

Mr. Schmitt stated I did.

Mr. Wilson asked oh you did? Ok.

Mr. Schmitt stated I call for a vote.

Mr. Wilson stated let's have a discussion of the motion first. I understand what Eugene is saying and what Mrs. Hoffer is saying. But what if that building is sold in several years and people who do have vehicles live there and that certainly wouldn't be a good situation. I still wonder maybe the owner could consider as we mentioned combining that one finished area with an existing apartment and making a sixth large apartment. So I'm really opposed to this motion. I'm ready to vote now.

Mr. Schmitt stated I call for the vote.

Mr. Wilson stated well say "aye" or no.

Mr. Schmitt stated "aye".

Mr. Wilson asked six, four, do we have four? If you vote "aye" you approve the variance.

Mr. Sanborn stated I vote aye.

Mr. Schmitt stated I vote aye. Who is opposed?

Mr. Andrew asked can we get a show of hands please? Can we have a show of hands of those in favor of the motion to approve? Those opposed, could you raise your hands? Dick, were you in the opposition?

VOTE: Motion failed 2-3. (Funk, Wilson, Worth).

Item #3. Other matters.

Mr. Andrew stated we have no other matters for you this afternoon. We do have items pending so we will have various cases for you to consider at your April meeting. If I have my calendar right I believe that should be the 19th of April. And I believe we will meet then and we will have at least one and maybe two cases for you. We have no further updates on the Toothman variance on North 7th. But we are continuing to work with them on options. If they come up with a 7.5 ft. setback that won't be back. If they have something that's less than 7.5 ft. and will result in more than 3 ft. then that will be brought back to you to consider that. We're still looking at the floor plan and they're not going to be able to do an addition that's

going to come out and match the existing but the question is how much will work if it is offset. That's all we have for you this afternoon.

Mr. Schmitt stated with there being no other business we are adjourned.

Meeting adjourned at 4:53 p.m.

Dean Andrew, Secretary

ATTEST